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LEGISLATIVE

RESEARCH COMMISSION

CARE PROVIDED BY REST HOMES; INTERMEDIATE CARE FACILITIES, AND SKILLED NURSING HOMES; AND NECESSITY FOR CERTIFICATES OF NEED; AND CONTINUING CARE ISSUES

REPORT TO THE
1991 GENERAL ASSEMBLY
OF NORTH CAROLINA
1991 SESSION

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STATE OF NORTH CAROLINA

LEGISLATIVE RESEARCH COMMISSION

STATE LEGISLATIVE BUILDING

RALEIGH 27611

December 14, 1990

TO THE MEMBERS OF THE 1991 GENERAL ASSEMBLY:

The Legislative Research Commission herewith submits to you for your consideration its final report on care provided by rest homes, intermediate care facilities, and skilled nursing homes; and necessity for certificates of need; and continuing care issues. The report was prepared by the Legislative Research Commission's Committee on Care Provided by Rest Homes, Intermediate Care Facilities, and Skilled Nursing Homes; and Necessity for Certificates of Need; and Continuing Care Issues pursuant to Section 2.1(13) of Chapter 802 of the 1989 Session Laws.

Respectfully submitted,

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Speaker

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President Pro Tempore

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Legislative Research Commission

1989-1990

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PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is a general purpose study group. The Commission is co-chaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

At the direction of the 1989 General Assembly, the Legislative Research Commission has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Co-chairs of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Co-chairs, one from each house of the General Assembly, were designated for each committee.

The study of Care Provided In Rest Homes, Intermediate Care Facilities, etc. was authorized by Section 2.1(13) of Chapter 802 of the 1989 Session Laws (1989 Session). The act states that the Commission may consider House Bill 173 in determining the nature, scope and aspects of the study. The relevant portions of Chapter 802 and House Bill 173 are included in Appendix A. The Legislative Research Commission grouped this study in its Human Resources area under the direction of Senator Russell G. Walker. The Committee was chaired by Senator George B. Daniel and Representative Theresa H. Esposito. The full membership of the Committee is listed in Appendix B of this report.

BACKGROUND

At the end of 1990 the number of nursing home beds estimated to be available in North Carolina will be 26,832. There are approximately 25,673 domiciliary beds in North Carolina. Approximately 60 percent of the residents of these facilities are 65 and older; the average age in nursing homes is 83. These numbers will continue to grow as the older population grows. Today there are more than 700,000 people 65 and over in North Carolina. At the turn of the century, the average life span in America was 47; today it is 71 for men and 78 for women. These are the average life spans; many live longer. In fact, people 85 and older are the fastest growing segment of the older population today.

For general definitional purposes, a nursing home is a facility for sick people. Two levels of care may be provided - intermediate nursing care and skilled nursing care. As of January 1990, there were 262 nursing homes in North Carolina with 26,202 beds: 13,234 intermediate care beds and 12,968 are skilled nursing beds.

A team made up of an administrator, two nurses, and a dietician and/or pharmacist visits each nursing home at least once a year. Complaints in nursing homes, which average about four per day statewide, are investigated by four nurses in the Division of Facility Services. The Division uses its own discretion as to how soon a complaint is investigated.

The other type of facility of concern to the Committee is the domiciliary home which is a facility for persons who need assistance with the activities of daily living. The following listing outlines the number of domiciliary homes in North Carolina:

1. Homes for the aged and disabled (homes serving 7 or more residents) - 423 facilities with 21,215 beds.

2. Family Care Homes (Homes serving 2 to 6 residents) - 198 facilities with 345 beds.

3. Non-Medical Group Care Facilities (Homes for developmentally disabled adults) - 183 facilities with 1,033 beds.

In order to be licensed as a domiciliary home, an application is filed with the county department of social services and forwarded to the Division of Facility Services. An initial visit is made to the facility by a team of consultants from the Division of Facility Services and includes architects and engineers to determine if the structure meets the minimum standards for a facility. Thereafter, a facility's license is renewed annually based on a recommendation from the local county department of social services. Staff from the Division of Facility Services is available to work with the local departments in solving problems in any of the facilities.

Although there are many potential issues related to long term care facilities, House Bill 173 introduced by Senator Ollie Harris, outlined the scope of work for this committee. This study is a continuation of a study on the same topic authorized by the 1987 General Assembly. One of the findings of that study was that there was a great need to reauthorize the Committee to continue the study of nursing homes and rest homes.

COMMITTEE PROCEEDINGS

The Legislative Research Commission's Committee on Care Provided by Rest Homes, Intermediate Care Facilities, and Skilled Nursing Homes; and Necessity for Certificates of Need; and Continuing Care Issues met five times during the course of its deliberations: January 4, 1990, February 15, 1990, April 5, 1990, October 18, 1990, and November 19, 1990.

The first meeting on January 4, 1990 focused on the regulatory process for nursing homes and domiciliary homes. The Committee was particularly interested in the extremely complicated system of regulating domiciliary homes and the role of the State and local agencies in licensure and regulation. All of the technical information from this meeting is contained in the Committee minutes. (See Appendix C and D).

The North Carolina Legislature established the requirements for licensing and monitoring domiciliary homes which is stated in General Statutes 131D. In addition to a number of specific requirements, the Statutes define domiciliary homes subject to licensing and inspection and set forth authority for the Department of Human Resources to inspect and license under rules adopted by the Social Services Commission. General Statute 108A stipulates the county DSS role in monitoring and G.S.131E specifies the role of the Penalty Review Committee.

The Social Services Commission works within authority of General Statutes 153 and 131D-2 to establish rules for inspecting and licensing domiciliary homes. Any person or organization can petition the Social Services Commission for changes. Typically, changes are initiated by the Division of Social Services staff, although the General Assembly may instruct the Social Services Commission to examine specific rules. The Social Services Commission itself may initiate a study, or resident advocates or the industry may initiate requests for change.

Within the Department of Human Resources, responsibility has been delegated to the Division of Social Services and then to the Adult and Family Service Branch for five general duties:

1. Develop and recommend licensure standards as rules to the Commission;

2. Interpret the standards established by the Commission and the Residents' Bill of Rights;

3. Develop policies, procedures and forms used for licensing and monitoring;

4. Provide training and technical assistance to county departments of social services; and

5. Assure compliance with civil rights.

As the DSS Adult Group Care Services Unit has only one professional staff person assigned full time for all of its responsibilities for domiciliary homes, its ability to complete these responsibilities in a comprehensive manner is limited. For example, training is limited to a once-in-a-career, one-week training program for newly appointed personnel in the local departments of social services. Technical assistance is, for the most part, limited to written and phone responses to local departments of social services. Individual interpretations to specific counties have not been abstracted and circulated to all counties in recent years.

Within DHR, responsibility has been delegated to the Division of Facility Services for the following:

1. Taking licensing actions, which includes issuing, denying, renewing, downgrading, suspending, revoking;

2. Enforcing compliance with standards and residents rights;

3. Investigating complaints in conjunction with a county DSS;

4. Providing consultation and technical assistance to county departments, and cooperating with DSS to provide training;

5. Providing consultation and technical assistance to the homes;

6. Providing on-site inspection of homes;

7. Producing up-to-date lists of all homes; and

8. Providing continuing education programs for home administrators and supervisors in charge.

The Group Care Facilities Branch of the Division of Facility Services assigns areas of the State to field consultants who are housed in the central office in Raleigh but who aim to provide continuity of contact with local DSS's and the homes. In addition, DFS has one regional office in the western part of the State at Black Mountain. Field staff work with local DSS personnel and the home administrators in their defined territory.

Responsibility for reviewing and recommending acceptance (or modifications to) penalties proposed by DFS is delegated to the Nursing Home/Rest Home Penalty Review Committee (PRC) by DFS 232D-34. The DHR Secretary is required to establish the nine-member Committee and to name personnel to represent designated categories including a pharmacist, a nurse, a nursing home

and a domiciliary home representative and a public member. Currently, the DHR Assistant Secretary for Administration and Liaison Services chairs the PRC.

The Committee meets at least once each month and is generally the final review step in the negative action process of monitoring and surveying facilities, identifying deficiencies and violations, proposing sanctions, reviewing proposals and actual administration of sanctions. The Licensure Section of the Division of Facility Services serves as staff to the Committee and makes recommendations on each action. Recommendations of the PRC that are accepted by DFS may be appealed by a home.

The Ombudsman Program was established as a requirement of the Federal Older American Act to provide advocacy for older persons. The Program is patient- or resident-oriented and is not regulatory in nature. The North Carolina Program functions through a State Ombudsman in the Division of Aging and independent regional ombudsman reporting to Area Agencies on Aging in local Councils of Government. The program is directed to both nursing homes as well as domiciliary homes. There are a total of 18 regional ombudsmen, all except four of whom are part time. The State Ombudsman provides training, oversight and advice; the regional ombudsmen report to the directors of the area agencies.

In addition to directly receiving complaints from residents or their families or guardians, ombudsmen relate primarily to Domiciliary Home Community Advisory Committees, which are described below. The ombudsmen provide training and technical assistance to the committees and assist in coordination with the local DSS's.

Two functions of the Division of Health services are directed toward the licensing and monitoring system: sanitation and dietitian services. At the State-level, the Division of Health Services establishes guidelines which sanitation personnel in local health departments apply in their monitoring of local facilities.

including domiciliary homes. A study has been initiated recently to examine and resolve the current complexity of sanitation standards, forms and procedures.

The Division of Health Services also provides oversight of regional dietitians. These regional dietitians provide consultation to local DSS adult home specialists. Because of the limited number of dietitians, consultation is limited to responding to specific requests from local DSS's.

The Division of Mental Health, Developmental Disabilities and Substance Abuse Services, in addition to other responsibilities, is concerned primarily with the program content of those domiciliary homes that serve only the developmentally disabled (referred to as DD homes). DD homes fall within the classification of two to nine residents, with the majority having about six residents.

These homes are operated under various auspices which have impact on monitoring requirements and funding sources. All homes that are operated by a local area mental health authority or by private nonprofit agencies under contract with the area authority are required to comply with program standards and licensure rules promulgated by the Commission on MH/DD/SS over and above the State/County Special Assistance funds. Monitoring and licensure for these DD homes is relatively complicated, with both local DSS's (and therefore DFS and DHR-DSS) as well as personnel from MH/DD/SAS Division having a role.

However, DD homes that are operated for profit or are private nonprofit agencies licensed under General Statute 131-D are monitored by a local DSS. For these homes, a local DSS provides monitoring for all those aspects of the basic domiciliary home licensure rules appropriate to domiciliary homes. In addition, personnel from the four regional offices of the Division of MH/DD/SAS monitor additional programmatic standards to these homes in order to certify their programs and to allocate special funding over and above the Special Assistance funds.

County departments of social services are designated in the Statutes to be responsible for ongoing monitoring of domiciliary facilities. This responsibility is implemented in all counties with at least one domiciliary home; thus, about 95 of the 100 county DSS's are currently involved in this process. There are about 125 persons involved with this program in the local counties; however, many of these individuals in small population counties perform their monitoring duties as one part of their job responsibilities. The on-the-line person in each county is an adult homes specialist or a worker who carries that responsibility who typically works within an adult services unit. In the more populous counties, typically, the adult home specialist(s) reports to an adult services supervisor. Within that group, others are responsible for adult protective services and placement of individuals into homes.

In a separate unit in the county DSS, residents and applicants are processed through income maintenance to determine eligibility for Special Assistance.

The principal responsibilities of a county DSS regarding monitoring and licensing are the following:

1. Encouraging the development of domiciliary care facilities;

2. Processing applications for licenses in cooperation with DFS;

3. Routine monitoring of facilities to assure compliance with licensure standards, Residents Bill of Rights, and documentation of Civil Rights compliance;

4. Complaint investigation and enforcement;

5. Technical assistance to homes; and

6. Cooperating with placement assistance and protective services investigations.

The adult homes specialists are required to make monthly site visits; however, in practice, there is slippage, and homes with few problems may be visited less frequently (each 45 days, for example). Priorities are typically set for the specialist to respond to complaints and to deal more frequently with problem situations in a minority of the homes. Adult homes specialists report that a small number of these problem homes typically take a majority of their time.

The specialists are required to make an evaluation of the operation of each home and to submit an annual recommendation to DFS for renewal of license.

In the conduct of their jobs, the adult homes specialists must work with a large number of other organizations and individuals in the local area. These relationships are described in the next paragraphs.

A Domiciliary Home Community Advisory Committee is required by G.S.131D-31 to be established in each county which has at least one home. The General Assembly defines the role of the Committees as maintaining the intent of the Residents Bill of Rights and promoting community involvement and cooperation with domiciliary homes to ensure quality care for the elderly and disabled adults. The members are volunteers. The boards of county commissioners are encouraged to appoint residents of the county with specified backgrounds to the committees.

The volunteer members meet as a committee and receive training and advice from the Regional Ombudsman. When the system is working well, they make visits to homes on a quarterly basis, prepare a brief written report on their observations and attempt to be helpful to the home in meeting the standards. They do not have licensing or monitoring authority. If they identify problems in

the homes, they are instructed to report them to the ombudsman or to the DSS adult services specialist for follow-through.

The fire marshall has responsibility for annually inspecting the homes to assure compliance with fire safety codes and for assisting local DSS home specialists when fire safety violations are found. In some counties, there are a number of fire departments in incorporated cities with separate fire marshalls with whom the local DSS must relate. The annual inspection is an important part of the annual recommendation regarding relicensure made by the local DSS to DFS. In some instances, a fire marshall will report other problems to the local DSS and may go out on inspections together with the local DSS or DSF staff.

The local building inspector examines all aspects of a building at the time of initial licensure and when problems are identified. Typically, subsequent annual inspections are not made to determine compliance with building codes.

The health department sanitarians make annual visits in the homes to inspect for compliance with health department sanitation standards for a particular type of home. In addition, some health departments hold training sessions for homes. They also support the county DSS and the DFS in responding to complaints or when violations are identified.

The regional dietitians of the State Department of Health respond to questions and requests for technical consultation from the adult home specialists. Because of their limited number, the dietitians do not provide advice directly to the homes.

In some instances, the police and sheriffs' departments are called upon by a local DSS when it is believed there is a threat to the safety of one or more residents or when a site visit is being made in response to a complaint suggesting the need for protection of the worker or of a resident.

Area Mental Health Authorities relate solely to the DD homes as described earlier for the State DMH/DD/SAS.

The Committee met in Burlington on February 15, for the purpose of visiting a nursing home. It also reviewed more information related to nursing homes and rest homes.

As there has been concern about care received in nursing homes in North Carolina, so there has also been concern and action at the national level. Early in the 1980's some changes in the federal nursing home requirements were proposed that generated much controversy. As a result Congress directed the Department of Health and Human Services to conduct a study. This study was executed by the Institute of Medicine and was published in 1986 with about 50 very specific recommendations for changes in the nursing homes regulatory system.

Some of these Institute of Medicine recommendations and several congressional bills were pieced together and were included within the Omnibus Budget Reconciliation Act of 1987 (OBRA). As a result, experts testified at the February 15th meeting before the Committee that OBRA is the most comprehensive and far reaching revision of the Medicare and Medicaid Programs since their inception. This legislation represents a subtle but profound change in the role of the federal government in nursing home regulations.

Heretofore, states have had primary responsibility for protecting public health, and as a result, have been the regulators of health care institutions. But OBRA will change this tradition. Not only is the statute itself very detailed, but the regulations that are being issued by the federal government as a result of OBRA are very prescriptive. States will no longer have the degree of flexability that has traditionally been the case.

In 63 pages of federal statute; OBRA divides the new nursing home requirements into four subsections:

1. The definition of a nursing facility;

2. Requirements related to the provision of services;

3. Requirements related to patients' rights; and

4. Requirements related to administration and other matters.

It seems that while this Committee was meeting over the past year and one-half the federal government has significantly pre-empted the states' authority to regulate nursing homes. Nursing homes will have new federal requirements about whom they hire, their qualifications, how employees are trained, how frequently and by whom, what services are provided, and to whom, and how services will be evaluated. (For further analysis of OBRA see Appendix E which was provided to the Committee by the North Carolina Health Care Facilities Association in its presentation February 15, 1990.)

A representative of the Division of Aging briefed the Committee on the Ombudsman Program, the Domiciliary Community Advisory Committees, and the Nursing Home Community Advisory Committee. In the 1970's there was an emphasis in the Older Americans Act to have volunteer advocates at the grass roots level. Therefore, in 1978, G.S. 131E-128 created the Nursing Home Community Advisory Committee structure.

Composition of this Committee is based on the number of nursing homes in a county. The Committee members are appointed by the county commissioners. The basic unit is usually five and members are added according to the number of homes in that particular county. Part of the legislation requires that the industry have the opportunity to provide nominations to this committee. Each time a vacancy occurs on the Community Advisory Committee nominations from the industry are solicited so that up to one-third of the Committee membership be

recommended by the industry. The intent of the legislation was for the Community Advisory Committees to maintain the spirit of the Nursing Home Patients Bill of Rights and also to promote community involvement. They visit the nursing homes in the county in which they serve on a quarterly basis. They visit with the patients and work with the facilities in trying to resolve any kind of long term care issues that arise or have developed in a facility or issues in general.

In 1983 the same legislation was passed for the domiciliary homes residents. The Community Advisory Committee members are responsible for making visits to the domiciliary homes on a quarterly basis, and the family care homes and the group homes on an annual basis. The intent of this legislation is to promote community involvement. Since they are located in the area where the homes are located, they are accessible to the residents. They can also work with the facility administration on trying to resolve problems that do occur.

The Division of Aging in 1983 created eighteen regional ombudsmen positions. These are people who are certified by the state ombudsmen and are located in each of the eighteen area agencies on aging. One of their responsibilities that has been designated by the Division of Aging is that they provide training, technical assistance, and guidance to the Community Advisory Committee. The 1987 legislation to the Older Americans Act strenthened the program even more.

The 1989 General Assembly also established by statute the Ombudsman Program. The purpose of the program is to advocate on behalf of residents in long term care facilities, administer and supervise the program state-wide, provide information to the general public, promote community involvement in long term care facilities, certify regional ombudsmen, etc. They utilize mediation in trying to resolve any kinds of problems that do occur. These persons have to be certified by the State Long Term Care Ombudsman and must receive training in complaint investigation techniques. In addition they submit reports to the state ombudsman and they keep the State Ombudsman informed on what is going on in the region.

They work with the facility administration and sometimes they provide in-service training on some various type of expertise.

Representatives of the North Carolina Association, Long Term Care Facilities made a presentation to the Committee related to the financial picture of the industry rest homes and how they take care of a resident in a home for a very low per day, per person, cost.

At a previous meeting a Committee member had asked the Association questions related to personnel turnover. The Association presented its findings at the February 15 meeting. The results are shown in Appendix F.

On the third meeting, April 5, 1990, the Committee began with a review of the role of the county in domiciliary home quality. The Committee heard from an adult homes specialist and a county director of social services. The adult homes specialist shared with the Committee her role in the local department of social services relative to domiciliary home inspection. One of the conclusions was that duties had increased but staff had not increased. One of the responsibilities is to visit each home at least once a month. A large portion of time is spent in investigating violations of the Residents Bill of Rights and determining whether or not to make a recommendation for a penalty.

The Committee heard a presentation on a study which was initiated by the North Carolina Society for Hospital Social Work Directors with participation by the North Carolina Hospital Association and analysis provided by the Duke Long Term Care resources Program. Is delayed discharge of older patients in North Carolina hospitals a significant problem in long term care? To answer the question the study selected a data base of 3,000 patients covering many North Carolina hospitals, most of whom were elderly and were ready for seeking discharge to an alternative level of care.

From the study data, excessive delays in discharging acute care hospital patients to appropriate levels of care does appear to be a serious and costly problem in North Carolina. The average 16.7 day delay in placement of those classified as "medically ready for discharge" appeared to be excessive when compared with comparable figures in other states. For example, a study in Michigan hospitals documented an average delay of 6.5 days.

Excessive delays are costly to hospitals in revenues lost and in the inefficient use of resources. These delays are costly to patients and their care givers when hospital-based acute care is no longer either the care patients need or the place they prefer. The personal and social cost of excessive delays in discharges of older patients, in sum, is very high.

The nursing home and domiciliary home industries offer a vital and necessary service to families and individuals in North Carolina. Since these services are offered to such a vulnerable population, the General Assembly, by its past actions, has determined that these enterprises should be regulated by the State. The protection of vulnerable people depends upon the effective monitoring and enforcement chain established by law and regulation.

The Department of Human Resources has been particularly concerned about the division of responsibilities among various agencies that monitor and regulate domiciliary homes. To this end the Secretary of the Department, David T. Flaherty, commissioned an outside study of the regulatory system for domiciliary homes. The October 18, 1990 meeting was devoted to this report by KPMG Peat Marwick.

This report by Peat Marwick provides the findings and recommendations under Peat Marwick's contract with the State to determine the adequacy and appropriateness of the current regulatory policies and procedures and the validity and analysis of the current operating cost reporting and reimbursement methodology of Homes for the Aged. The report was divided into three sections:

Section A - Regulations, Licensing and Monitoring
Section B - Assessment of Current Cost Reporting System
Section C - Reimbursement

The report is on file with the Committee.

The discussion and summary information contained in this section is not inclusive of all information brought before the Committee. For those interested in the subject, the Committee minutes contain a great amount of quality information for further study.

At its November 19, 1990 meeting, the Committee reviewed the information it had gathered during the course of its study. After discussing a range of possibilities, the Committee makes the recommendations included in the following section.

FINDINGS AND RECOMMENDATIONS

FINDING 1. As there has been concern about care received in nursing homes in North Carolina, so there has been concern and action at the national level. Changes in nursing home regulation have been developing at the federal level for seven or eight years. Finally, Congress passed the Omnibus Budget Reconciliation Act of 1987. This legislation represents a subtle but profound change in the role of the federal government in nursing home regulation. The federal government has significantly pre-empted the states' authority to regulate nursing homes. Nursing homes now have federal requirements about whom they hire, their qualifications, how employees are trained, how frequently and by whom, what services are provided and by whom, and how services will be evaluated.

RECOMMENDATION 1. The Committee recommends no new legislation related to nursing homes. This action by the Committee comes from evidence presented that the system of regulation for nursing homes is in a state of flux because of the OBRA requirements. The Committee recommends that the Study Commission on Aging, since it is ongoing, closely monitor the developments in nursing home regulation in North Carolina for future State action.

* * *

FINDING 2. The June 22, 1990 meeting of the Administrative Rules Review Commission invalidated rules of the Social Services Commission affecting minimum education and training requirements for domiciliary homes and group homes for the developmentally disabled. For licensure, these homes no longer have educational or training requirements for the administrator, the supervisor-in-charge, the activities coordinator, and the personal care staff.

RECOMMENDATION 2. The Committee recommends that the Social Services Commission be given specific statutory authority to set minimum educational requirements for the administrator, the supervisor in charge, and the activities coordinator for domiciliary homes and group homes for the developmentally disabled. (See appendix G)

* * *

FINDING 3. After considering evidence presented at a number of meetings, the Committee finds that there are serious problems in the overall system of regulating, licensing, and monitoring of domiciliary homes in North Carolina. The major deficiencies are the following:

- The regulations do not appear to reflect the reality of the characteristics of residents currently under care.
- The regulations are not well understood by all those being monitored and by those doing the monitoring.
- As it is now administered, the system does not assure uniform interpretation and application of the standards.
- Alleged violations of regulations are not being uniformly resolved expeditiously and evenhandedly.
- There are serious gaps in communications between state-level and county-level participants in the process.
- There is a lack of adequate training for county-level monitors.

- There is at least the perception that the system affording due process has been used to circumvent the intent of the regulations.

The North Carolina system for regulating, licensing, and monitoring domiciliary homes should:

- Be responsive to the characteristics and needs of residents.
- Be efficient and effective in implementing the regulations.
- Provide for and facilitate uniformity of application and equity of treatment for the homes.
- Have clear lines of responsibility, authority, and accountability.
- Be realistic for North Carolina in terms of costs of implementation and the existing environment within which the system must operate.

RECOMMENDATION 3. In order to establish clarity of responsibility, authority, and accountability at the State level, it is recommended that the Division of Facility Services within the Department of Human Resources be recognized as the single State unit for the system of domiciliary home regulation.

The current responsibilities relevant to licensing and monitoring domiciliary homes of the Division of Social Services should be transferred to the Division of Facility Services. This should include the following functions: Developing recommendations for rulemaking, interpreting the rules and providing training and technical assistance to local county personnel involved in this function.

In order to handle the issue of lack of uniformity in administration at the local level, two recommendations are made:

1. DFS should initiate a positive strong program to assure communication and training. This should include regular policy and interpretation issuance training, feedback on DFS and Penalty Review Committee actions on county recommendations and the oversight function.

2. Rural counties or other counties with only a few domiciliary homes should be encouraged to contract with other counties in the area for conduct of the monitoring function. An attempt should be made to develop a workload for an area which warrants at least one full time adult home specialist.

In order to ensure uniformity of administration and equity of treatment of the homes, a vastly improved system of communication and training between DFS and local departments of social services must be established. Specific recommendations follow.

° Continue the current twice annual training for new staff.

° Establish an ongoing training program to better prepare local DSS staff to participate in the system which includes at least the following which are idenified as needs in the study:

- Improved documentation of objective monitoring reports and recommendations for corrective action and negative action.

- Improved skills in dealing with basic monitoring tasks as well as the increasingly complex tasks required by the changing characteristics of residents.

- Consider using personnel from DMH/DD/SAS to assist in training for improved service to chronically mentally ill and developmentally disabled residents.

° Distribute the results of negative action recommendations, with the rationale for the decisions to all local DSS's for their information and training and make more detail available to the home community.

DFS should also utilize the resources of the Division of Social Services, the Division of Aging and the State public health system in providing the training for local domiciliary home service providers.

As of the publication of this Report the Secretary of the Department of Human Resources has endorsed these recommendations and has taken steps to implement the transfer of functions to the Division of Facility Services. Although this action takes no legislative action, it is believed by the Committee that the actions of the Department should be reviewed by a legislative committee. Therefore, it is recommended that the ongoing Study Commission on Aging review the structural changes and the communications and training recommendations. (See Appendix H)

* * *

FINDING 4. The questionable timeliness and appropriateness of the Division of Facility Services actions on responses are the major issues raised by local departments of social services. These issues must be examined carefully because they involve many factors including North Carolina's assurances for administrative hearings and administrative due process.

° Local DSS's report an excessive time frame for DFS to complete its staff review of local DSS recommendations for penalties and to

prepare recommendations for the Penalty Review Committee, during which the homes continue to operate.

DFS responded that they have attempted, for the past three years, to expedite a process by which local DSSs recommend penalties by use of a form that captures the most salient details for efficient committee review. DFS maintains that when local DSS's submit all needed information in the proper format, a recommendation can go to the PRC within two months (depending upon whether an informal hearing is requested).

° Local DSS's report that DFS privately interviews representatives of homes with pending penalties, at the initiative of the home, and reaches decisions on local DSS recomendations arbitrarily at that time, and does not communicate the logic of the decision (or even the fact of the action) to the local DSS.

In viewing this concern, DFS reports that local DSSs misunderstand the informal hearing process required by G.S. 150B-22 on Administrative Hearings which states, in part, "It is the policy of the State that any dispute between an agency and another person that involves the person's rights, duties, or privileges, including licensing or the levy of a monetary penalty, should be settled through informal procedures. The agency may not conduct a proceeding at which sworn testimony is taken and witnesses may be cross-examined..."

° Resident advocacy groups report that a review of DFS files demonstrate that the homes have the opportunity of adding additional information to the file but the person making the complaint or the DSS making the penalty recommendation do not have the opportunity to rebut or otherwise comment on the reliability of the information.

For example, a home may state that the problem has been taken care of but the local DSS response is not sought.

DFS reports that anyone can add information to the files, including advocacy groups.

- DSS's do not understand the rationale for the differences between their penalty recommendations and those of DFS to the Penalty Review Committee. DFS typically does not inform DSSs of actions on their recommendations; it is not unusual for a local DSS to learn of DFS action from the home or in the newspaper; this situation undercuts the credibility of the local DSS with the homes. In response, DFS reports that the rationale for its final decision on penalties is based upon considerations of consistency, reasonableness given the circumstances, legality and defendability in litigation.

- DSF reports that many times local DSS recommendations are not well documented or objective. An independent study by Carolina Legal Assistance in 1988 found lack of consistency among local DSSs recommendations for penalties and a lack of consistent documentation in local DSS files.

These findings point to a serious problem in the overall system. It is the general perception of local DSSs that the monitoring-licensing system begins to have problems when local DSS's interface with DFS around problem situations. Local DSS's report they do not believe they get the backing they need from DFS to effectively enforce the system. For example, it appears that local DSS's are not given the opportunity to respond to evidence introduced during the informal hearing process which therefore compounds this misunderstanding between local DSS's and DFS. In addition, DFS reports poorly documented recommendations from local DSS's inhibit their prompt response and require separate investigation.

RECOMMENDATION 4 The Committee recommends that DFS be statuatorily required to complete its staff review of local DSS recommendations for penalty action and to prepare recommendations for the Penalty Review Committee within 60 days. This requirement should not go into effect until January 1, 1992 so that DFS may work with local DSSs to better prepare needed information in the proper form. (See Appendix I)

* * *

FINDING 5. The General Statutes of North Carolina (G.S. 108A-40) authorized the implementation of the State/County Special Assistance to Adults (SA) Program to supplement the income of those Supplemental Security Income recipients in domiciliary care facilities. In addition to providing authorizing legislation, G.S.108A-47 provides limited legislation on eligibility criteria and limitations. The Social Services Commission is authorized by statute to adopt operation rules and regulations for administration of the State/County Special Assistance to Adults Program. In recent years, the General Assembly has established domiciliary care reimbursement rates through the Appropriations Act. State and counties share the cost of the SA program on a 50/50 basis.

G.S. 131D-3 establishes cost reporting requirements for all facilities (with the exception of family care homes; combination facilities providing either intermediate or skilled care in addition to domiciliary care; and facilities that are operated by or under contract with area Mental Health, Mental Retardation and Substance Abuse Authority) that receive funds under the SA program. This same chapter (G.S.131D-4) authorized the Department of Human Resources, Division of Social Services, to develop a uniform chart of accounts for use by all domiciliary care facilities funded totally or in part through the SA program to satisfy the cost reporting requirements of the statutes. Further, the statutes require the facilities to report total costs and revenues, using the uniform chart of accounts reporting format, to the Department of Human Resources by March 1 of each year.

G.S. 131D-3 also states that all facilities shall be required to permit access to any requested financial records by representatives of the Department of Human Resources for audit purposes effective July 1, 1981.

The implementation of the uniform chart of accounts cost reporting forms by domiciliary facilities covered by the statutes was made effective for calendar year 1983.

As part of its study, Peat Marwick conducted a random sample of 20 domiciliary care facilities drawn from the total population of 372 which filed cost reports during calendar year 1989. Significant findings of the cost report verification included:

- Reporting of payroll costs on the cost reports did not consistantly agree with federal tax return 941.

- A lack of vendor invoices and support documents to validate food, utility and other facility costs were not consistantly available.

- Depreciation amounts reported were not always supported by detail depreciation support schedules.

- Interest expense accounts were not consistently verifiable with bank statements.

The results of the findings did not appear to be confined to one set category of homes; rather the findings seemed to occur across the sample of facilities.

RECOMMENDATION 5. If cost report data is to be a valid source of data, the Committee recommends that the domiciliary facilities be required to obtain an independent certification. The certification of the cost report should be performed by a party independent of the facility such as an accountant or certified public

accountant. The certification statement would be less in scope than a financial audit of the facility. The independent certification should include:

- The verification that the amounts reported in the cost report relate to the proper calendar year, reconcile to general ledger, tax return, and/or financial statements.

- The validation of payroll costs reported to federal form 941 returns.

- The verification that depreciation expense is supported by appropriate backup schedules.

- The verification that interest expense reported agrees with bank statements and other support documentation.

- The verification that food, utilities, and other vendor payments are adequately supported by source documents.

- The certification that rent and lease expenses are supported by rental or lease agreements.

- A certification that data related to paid patient days is supported by adequate census.

The current certification statement should be amended to include a "check-off" related to the above review procedures. Again, the certification should be signed by an independent party. (See Appendix J)

* * *

FINDING 6. Historically the General Assembly has directly established the State/County Special Assistance for Adults Program reimbursement rate for

domiciliary homes in the Appropriations Act. This is an informal system and seems not to be consistently based upon data supplied from cost reports as required by statute.

Several factors in this process are unique to North Carolina. There seems to be no other state in which the legislature assumes direct responsibility for rate setting. Typically, a legislature establishes the parameters and policies for reimbursement rates and delegates that responsibility to an administrative department.

The fact that the Department of Human Resources has not usually made any comments about the need for increases or decreases in these rates is also unusual.

Another element of the current practice is also unique. Costs are determined for one type of home--homes for the aged--presumably to have some effect upon payment rates. However, the rates apply to all three types of homes.

The Committee believes that the current rate-setting process is too informal and is not based upon cost reporting data. Setting rates is one step in a system of planning, financing, contracting, placing, paying, monitoring and administrating the purchase of a service that the State finds important. The current methods do not lend themselves to an integrated system that best serves the State, client, and operator.

RECOMMENDATION 6. The General Assembly should request that the Department of Human Resources study the issue of how the State/County Special Assistance Program reimbursement rate for domiciliary homes is established and make recommendations about the adequacy of the process. This report should be made to the Governmental Operations Committee by January 1, 1992. (See Appendix K)

* * *

FINDING 7. North Carolina should take steps to improve the appeals process which is available to homes related to actions of the Penalty Review Committee. While domiciliary homes are entitled to due process, mechanisms should be established to prevent its abuse and trivialization.

RECOMMENDATION 7. The General Assembly should pass legislation that would help to better control the appeals process. It should include the following:

- Assess interest and dollar penalties from the date of the decision until the date of payment.

- In cases found by the Administrative Law Judge to have no foundation for an appeal or to be "frivilous", an assessment of costs against a violator for the time and other resources utilized by the county and State in the appeal process.

- Conversely, to protect a home against abuse by the regulators, the assessment of the cost to the home of defending itself against proposed negative actions in cases found by the Administrative Law Judge to be without foundation in regulation.

(See Appendix L)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

H **1**

HOUSE JOINT RESOLUTION 173

Sponsors: Representatives Easterling; Stamey, Kennedy, Buchanan, Wiser, and Flaherty.

Referred to: Rules.

February 7, 1989

A JOINT RESOLUTION AUTHORIZING THE LEGISLATIVE RESEARCH COMMISSION TO CONTINUE THE STUDY OF THE CARE PROVIDED BY REST HOMES, INTERMEDIATE CARE FACILITIES, AND SKILLED NURSING HOMES.

Be it resolved by the House of Representatives, the Senate concurring:

Section 1. The Legislative Research Commission may study the following issues concerning care provided by rest homes, intermediate care facilities, and skilled nursing homes:

(1) The placement and adequacy of the regulatory process for domiciliary homes;

(2) The fine and penalty process for nursing homes and domiciliary homes;

(3) The need to have mandatory independent nursing home preadmission screening regardless of assets and income levels to encourage appropriate use of alternative community based care;

(4) Follow-up of the implementation of the Omnibus Reconciliation Act of 1987 on the nursing home industry within the State;

(5) Separation of residents with severe mental illness from the frail elderly in domiciliary homes;

(6) The need to increase reimbursement rates for facilities that serve patients with special needs; and

(7) A registry that would allow nursing home and domiciliary home administrators to check the criminal record of potential aides.

Sec. 2. The Legislative Research Commission may make an interim report, including legislative recommendations, to the 1989 General Assembly, Regular Session 1990, and may make a final report to the 1991 General Assembly.

Sec. 3. This resolution is effective upon ratification.

APPENDIX B

LEGISLATIVE RESEARCH COMMISSION'S COMMITTEE ON CARE PROVIDED BY REST HOMES, INTERMEDIATE CARE FACILITIES, AND SKILLED NURSING HOMES; AND NECESSITY FOR CERTIFICATES OF NEED; AND CONTINUING CARE ISSUES.

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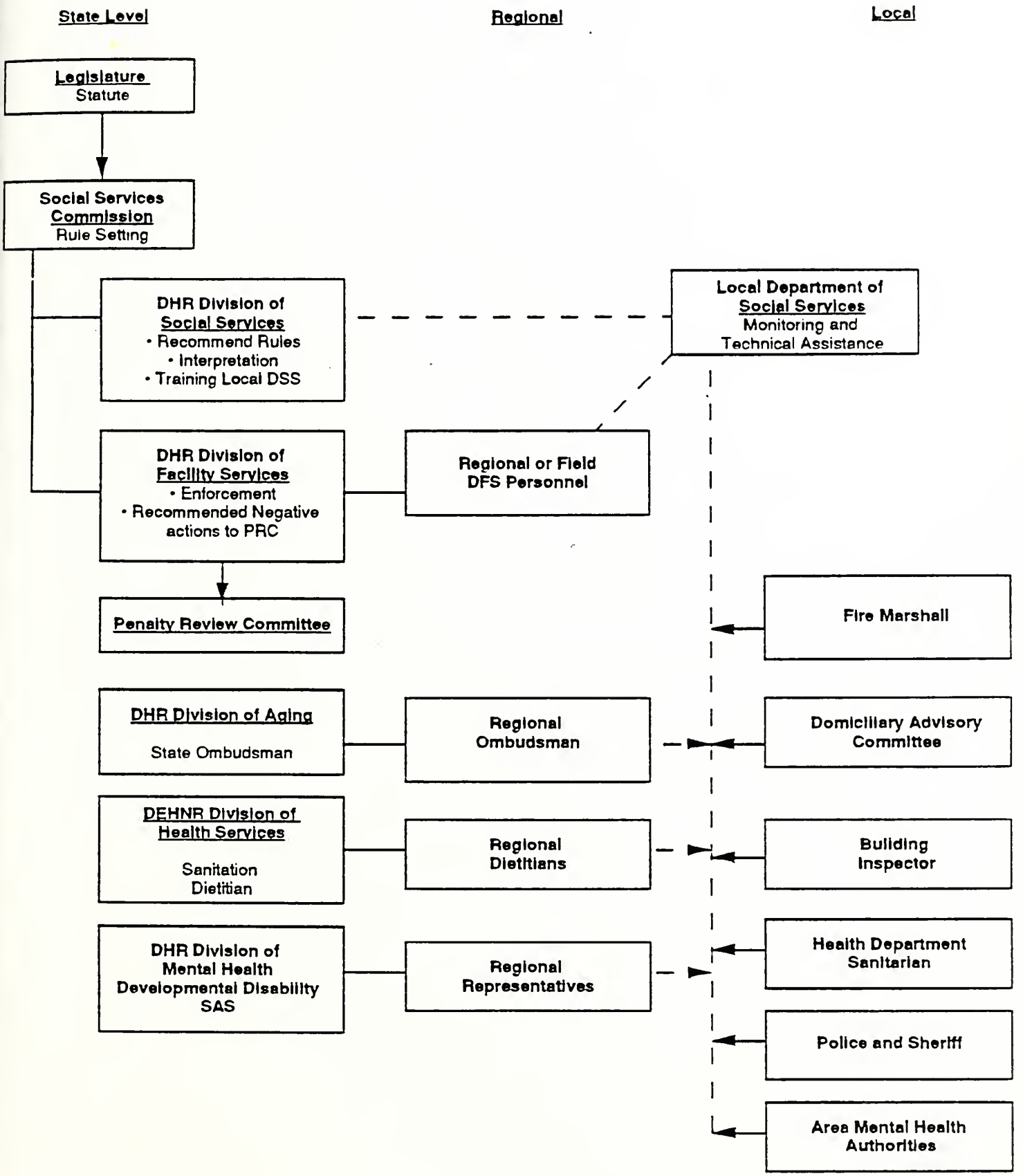
Organizational Relations in Licensing, Enforcement and Monitoring of Domiciliary Homes in North Carolina



APPENDIX D

PROCESS OF MONITORING
DOMICILIARY HOMES IN NORTH CAROLINA
AS OF SEPTEMBER, 1990

1.	LOCAL DEPARTMENT OF SOCIAL SERVICE	Unannounced site visits for monthly monitoring or in response to a complaint.
2.		DSS expresses "concern(s)" in written report; expectation is that home will correct deficiencies.
3.		DSS recommends "Corrective Action" to a home because of seriousness of deficiency and/or home has not acted on "concerns".
4.		DSS recommends negative action to DFS.
5.	DIVISION OF FACILITY SERVICES	DFS (1) requests more information from DSS, (2) investigates on-site and/or (3) meets with home.
6.		DFS typically (1) recommends to PRC a negative action or (2) decides that no action is warranted.
7.	PENALTY REVIEW COMMITTEE	On basis of executive summary by DFS, PRC may recommend (1) assessing a fine, (2) revoking a license, (3) changing license to provisional or (4) suspending admissions. LATER, the provisional license may be changed to either "regular" or "revoked" based upon DFS decision.
8.	DOMICILIARY HOME/ ADMINISTRATIVE LAW JUDGE/ DHR SECRETARY/THE COURTS	Home (1) may accept negative actions and pay fines/and correct reported violations; or (2) appeal the DFS decision to the Office of Administrative Hearings (OAH). The OAH reviews arguments and issues its recommendations to DHR Secretary; upon delegation, the DFS Director issues a Final Agency Decision. The home may appeal to the Courts.

STRUCTURE OF OBRA

In order to fully understand the impact of OBRA, it is helpful to know how the legislation itself is structured. Title IV of OBRA applies to Medicare, Medicaid, and other health-related programs. Subtitle C - Nursing Home Reform, is composed of two parts, each with numerous sections, as outlined below:

PART 1 - MEDICARE PROGRAM

Sec. 4201. Requirements for skilled nursing facilities
- *A. Skilled nursing facility defined*
- *B. Requirements related to provision of services*
- *C. Requirements related to resident rights*
- *D. Requirements related to administration and other matters*
- *E. State requirements related to SNF requirements*
- *F. Responsibilities of Secretary*

Sec. 4202. Survey and certification process
Sec. 4203. Enforcement process
Sec. 4204. Effective dates
Sec. 4205. Annual report
Sec. 4206. Construction

PART 2 - MEDICAID PROGRAM

Sec. 4211. Requirements for nursing facilities
- *A. Nursing facility defined*
- *B. Requirements related to provision of services*
- *C. Requirements related to resident rights*
- *D. Requirements related to administration and other matters*
- *E. State requirements related to NF requirements*
- *F. Responsibilities of Secretary*

Sec. 4212. Survey and certification process
Sec. 4213. Enforcement process
Sec. 4214. Effective dates
Sec. 4215. Annual report
Sec. 4216. Construction

Sections 4201 and 4211 contain the most significant changes, amending Medicare and Medicaid law by revising or expanding the conditions of participation. Regulatory interpretation of many of these provisions is expected in late 1988, when HCFA is to publish revised conditions of participation.

In the following pages, "Secretary" refers to the Secretary of Health and Human Services, whose responsibilities are carried out by the US Health Care Financing Administration (HCFA). "The State" should be interpreted as the NC Department of Human Resources, and may specifically mean either the Division of Medical Assistance or the Division of Facility Services.

Nursing Facility Defined

* *Effective October 1, 1990, Medicaid law and regulations will no longer recognize skilled nursing and intermediate care services, only "nursing facility" services. Medicare law continues to address only skilled nursing facilities.*

Requirements Related to Provision of Services

All nursing homes must meet new or revised requirements in the following areas:

* *Quality of Life - services must promote maintenance or enhancement of quality of life of residents, and must include the establishment of an internal quality assessment and assurance committee with specified responsibilities.*

* *Scope of Services - services must be provided sufficient to attain or maintain the highest practicable physical, mental and psychological well-being of each resident based on the written care plan.*

* *Provision of Services - to the extent outlined in care plans, facility must provide or arrange for nursing, rehabilitative, social, pharmaceutical, dietary, activities, and routine and emergency dental services by qualified professionals.*

* *Resident Assessment - to be conducted on admission and at specified intervals, using an instrument approved by the State based on a uniform data set to be specified by the Secretary of the Department of Health and Human Services (Secretary).*

* *Preadmission Screening for Mentally Ill and Mentally Retarded Individuals - preadmission screening is required for any individual seeking admission to a nursing home to determine if the individual needs the level of services provided in a nursing home, and whether the person requires "active treatment" for mental illness or retardation.*

* *Required Nursing Services and Waivers - all nursing facilities must provide 24-hour licensed nursing services, with an RN on duty at least 8 consecutive hours a day, 7 days a week.*

* *Nurse Aide Training and Competency Evaluation - all nurse aides must complete a training and competency evaluation program that is at least 75 hours in length, with content and instructor qualifications to be specified by the Secretary. Aides employed prior to July 1, 1989 must complete an approved competency evaluation program.*

* *Required Social Services - facilities with over 120 beds must employ a full time social worker with a BSW or similar professional qualifications.*

Requirements Related to Resident Rights

* *Specified Rights - all nursing homes must protect and promote the following resident rights:*

  Free choice
  Freedom from restraints
  Privacy
  Confidentiality of personal and clinical records
  Reasonable accommodation of individual needs to voice grievances with prompt efforts by the facility to resolve
  Participation in resident and family groups
  Participation in other activities
  Examination of survey results upon reasonable request
  Protection of personal funds
  Other rights as determined by the Secretary.

* *Notice of Rights and Covered Services - facilities must give written notice of rights on admission, and notice of charges for any services not covered in per diem.*

* *Psychopharmacological Drugs - use of such drugs must be reviewed annually by an independent external consultant.*

* *Transfer and Discharge Rights - each resident may remain in the facility and not be transferred or discharged except in specified circumstances.*

* *Pre-transfer and Pre-discharge Notice - each facility must, prior to transfer or discharge, notify resident and family at least 30 days in advance, except where safety or health of individuals in facility endangered, necessary due to resident's health, or resident has been in facility less than 30 days.*

* *Readmit to First Available Bed - resident discharged to hospital must be readmitted (if services needed and appropriate) to first available semi-private bed.*

* *Equal Access to Care - facility must establish identical policies regarding transfer, discharge and covered services for all residents, regardless of source of payment.*

* *Prohibited Practices - facility cannot require waiver of Medicaid eligibility or assurance that resident will not apply for Medicaid benefits. Facility cannot require third party guarantees of payment. Legal representatives with access to resident's income or resources may be required to sign contract agreeing to provide payment from the resident's funds.*

* *Protection of Resident's Funds - facility may not require residents to deposit personal funds with facility, but must manage resident's personal funds if requested. Facility must purchase surety bond. Specifies certain requirements concerning management of resident funds.*

Requirements Related to Administration

* *Administration - facility must notify state licensing agency of changes in ownership, management, director of nursing.*

* *Administrator Standards - facility administrator must meet certain standards to be developed by the Secretary.*

* *Life Safety - facility must meet applicable provisions of relevant edition of life safety code.*

* *Sanitary and Infection Control - facility must establish and maintain infection control program to provide "safe, sanitary, and comfortable environment" and prevent development and transmission of disease and infection.*

* *Physical Environment - facility must be "designed, constructed, equipped and maintained" to protect residents, personnel, and public health and safety.*

* *Professional Standards - facility must comply with all applicable federal, state and local laws and with pertinent accepted professional standards and principles.*

State Requirements

* *Nurse Aide Training and Competency Evaluation - the State must specify and review nurse aide training and competency evaluation programs based on guidelines issued by the Secretary.*

* *Nurse Aide Registry - the State must establish and maintain a registry of all nurse aides who have satisfactorily completed training and competency evaluation, and any substantiated allegations of abuse, neglect or misappropriation of resident property by nurse aides.*

* *Appeals Process for Transfers or Discharges - the State must establish a fair mechanism for hearing appeals on resident transfers or discharges.*

* *Resident Assessment Instrument - the State must specify an assessment form, either one designated by the Secretary or one containing the minimum data set specified by the Secretary.*

* *Preadmission Screening and Annual Review - the State must establish a preadmission screening program for determining active treatment needs of mentally ill or retarded individuals, and conduct reviews of current residents who have a primary or secondary diagnosis of mental illness or mental retardation. A primary diagnosis of Alzheimer's Disease or a related disorder is excluded from the definition of mental illness.*

Duties of the Secretary of HHS

* *General Responsibility - the Secretary must assure that requirements and their enforcement are adequate to protect "health, safety, welfare, and rights of residents" and to "promote effective and efficient use" of public funds.*

* *Establish Minimum Standards - the Secretary must establish minimum requirements or regulations for:*

  - *nurse aide training and competency evaluation*
  - *appeals process for transfer and discharge*
  - *administrator qualifications*
  - *determining compliance with administration criteria*
  - *resident assessment data set and instruments*
  - *costs which may be charged to residents' personal funds*
  - *preadmission screening and annual review of mentally ill and mentally retarded*
  - *monitoring state waivers of 24-hour nursing requirement*

Reimbursement Provisions

* *Cost of Compliance - Medicare and Medicaid rates are to take into account the cost to facilities of complying with provision of services, resident rights, and administration requirements, including nurse aide training and competency evaluation.*

* *SNF/ICF Differential - the statutory requirement that Medicaid pay a higher rate for SNF services is eliminated.*

* *Utilization Review - eliminates coverage of SNFs/ICFs by the utilization review provisions of 42 USC 1396a(a)(30)(B) and 1396b(i)(4). This effectively eliminates on-site medical review requirements.*

Survey and Certification Process

* *Educational Programs - the State must conduct regular educational sessions for staff, residents, and their representatives on current survey and certification regulations, policies and procedures.*

* *Investigations - the State must investigate allegations of resident neglect, abuse, and misappropriation of property.*

* *Monitoring Compliance - the State may monitor facility compliance on-site on a regular, as needed basis if facility is in the process of correcting deficiencies, if verification is needed of continued compliance following correction of deficiencies, or if State has reason to question compliance.*

* *Surveys* - facilities are subject to unannounced standard surveys no later than 15 months after last standard survey. Extended surveys may be conducted in facilities found out of compliance during standard survey.

* *Surveyor Qualifications* - Secretary is to establish minimum qualifications for surveyors, and composition of survey team. Surveyors must successfully complete training and testing program in survey and certification techniques.

* *Conflict of Interest* - State may not use any individual as survey team member who has served as staff or consultant to facility surveyed, or has a personal or familial financial interest in surveyed facility.

* *Survey Consistency* - Secretary and States are to implement programs to measure and reduce inconsistency of survey results.

* *Notification* - State is to notify ombudsman of findings of non-compliance. If State finds "substandard care," State is required to notify the attending physician of each affected resident, and the State administrator licensure board.

* *Posting Survey Results* - facilities are required to post survey results in a place accessible to residents and their representatives.

Enforcement Process

* *Secretarial Authority* - the following remedies are available to the Secretary if a facility is found to not meet requirements:

  - Denial of payment for admissions after effective date of finding
  - Civil money penalty not to exceed $10,000 per day
  - Appointment of temporary management
  - Emergency closure and/or transfer of residents

* *State Sanctions* - the State must have in place through law or regulation at least the following remedies, unless the State can prove to the Secretary that alternative enforcement remedies are equally effective in deterring or correcting non-compliance:

  - Denial of payment for new admissions
  - Civil money penalties
  - Appointment of temporary management
  - Emergency closure and/or transfer of residents

* *Specified Remedies* - specific sanctions are to be imposed in various circumstances such as immediate and serious jeopardy to resident health and safety, three consecutive findings of non-compliance, and where State and Secretary disagree.

EXECUTIVE SUMMARY

PERSONNEL TURNOVER SURVEY FOR RESIDENTIAL CARE IN NORTH CAROLINA

Number of Surveys		137*
Geographic Location		
East		52
Central		61
West		24
Number of Beds		8151
Total Employees Required		3387
Total W-2's for 1989		8212
Turnover Rate		242.45
Average Hourly Starting Rate		$3.77

Major Reason for Leaving Employment

Inadequate Wage/ Lack of Benefits	130 out of 137	95%

Major Source of Employment Competition

Fast Food	68 out of 137	50%
Nursing Facilities	100 out of 137	73%
Other Industries	105 out of 137	77%

*Represents 31% of residential care facilities (12 beds and over) in the State.

**Minimum Wage Increase Effective April 1990 - $3.80

***Minimum Wage Increase Effective April 1991 - $4.25

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

D

91-LF-6
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Social Services Comm. Rest Home Rules. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE SOCIAL SERVICES COMMISSION TO ADOPT RULES PERTAINING TO THE EDUCATIONAL REQUIREMENTS FOR DOMICILIARY HOMES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-153 reads as rewritten:

" **§143B-153. Social Services Commission -- creation, powers and duties.** There is hereby created the Social Services Commission of the Department of Human Resources with the power and duty to adopt rules and regulations to be followed in the conduct of the State's social service programs with the power and duty to adopt, amend, and rescind rules and regulations under and not inconsistent with the laws of the State necessary to carry out the provisions and purposes of this Article. Provided, however, the Department of Human Resources shall have the power and duty to adopt rules and regulations to be followed in the conduct of the State's medical assistance program.

(1) The Social Services Commission is authorized and empowered to adopt such rules and regulations that may be necessary and desirable for the programs administered by the Department of Human Resources as provided in Chapter 108A of the General Statutes of the State of North Carolina.

(2) The Social Services Commission shall have the power and duty to establish standards and adopt rules and regulations:

a. For the programs of public assistance established by federal legislation and by Article 2 of Chapter 108A of the General Statutes of the State of North Carolina with the exception of the program of medical assistance established by G.S. 108A-25(b);

b. To achieve maximum cooperation with other agencies of the State and with agencies of other states and of the federal government in rendering services to strengthen and maintain family life and to help recipients of public assistance obtain self-support and self-care;

c. For the placement and supervision of dependent and delinquent children and payment of necessary costs of foster home care for needy and homeless children as provided by G.S. 108A-48; and

d. For the payment of grants-in-aid and other State funds to private child-caring institutions. The payment and distribution of grants-in-aid funds to private child- caring institutions shall be regulated by the grant-in- aid (GIA) formula. This formula and any modifications of this formula shall be approved by the Advisory Budget Commission prior to its implementation.

(2a) The Social Services Commission shall have the power and duty to establish standards and adopt rules and regulations:

a. For social services programs established by federal legislation and by Article 3 of G.S. Chapter 108A;

b. For implementation of Title XX of the Social Security Act, except for Title XX services provided solely through the Division of Mental Health, Mental Retardation and Substance Abuse Services, by promulgating rules and regulations in the following areas:

1. Eligibility for all services established under a Comprehensive Annual Services Plan, as required by federal law;

2. Standards to implement all services established under the Comprehensive Annual Services Plan;
3. Maximum rates of payment for provision of social services;
4. Fees for services to be paid by recipients of social services;
5. Designation of certain mandated services, from among the services established by the Secretary below, which shall be provided in each county of the State; and
6. Title XX services for the blind, after consultation with the Commission for the Blind.

Provided, that the Secretary is authorized to promulgate all other rules in at least the following areas:

1. Establishment, identification, and definition of all services offered under the Comprehensive Annual Services Plan;
2. Policies governing the allocation, budgeting, and expenditures of funds administered by the Department;
3. Contracting for and purchasing services; and
4. Monitoring for effectiveness and compliance with State and federal law and regulations.

(3) The Social Services Commission shall have the power and duty to establish and adopt standards:

a. For the inspection and licensing of maternity homes as provided by G.S. 131D-1;

b. For the inspection and licensing of domiciliary homes for aged or disabled persons as provided by G.S. 131D-2(b) and for the education requirements for the administrator, the supervisor in charge and the activities coordinator of these homes.

c. For the inspection and licensing of child-care institutions as provided by G.S. 131D-10.5;

d. For the inspection and operation of jails or local confinement facilities as provided by

G.S. 153A-220 and Article 2 of Chapter 131D of the General Statutes of the State of North Carolina;

e. Repealed by Session Laws 1981, c. 562, s. 7.

f. For the regulation and licensing of charitable organizations, professional fund-raising counsel and professional solicitors as provided by Chapter 131D of the General Statutes of the State of North Carolina.

(4) The Social Services Commission shall have the power and duty to authorize investigations of social problems, with authority to subpoena witnesses, administer oaths, and compel the production of necessary documents.

(5) The Social Services Commission shall have the power and duty to ratify reciprocal agreements with agencies in other states that are responsible for the administration of public assistance and child welfare programs to provide assistance and service to the residents and nonresidents of the State.

(6) The Commission is authorized and empowered to adopt such rules and regulations, not inconsistent with the laws of this State, as may be required by the federal government of grants- in-aid for social services purposes which may be made available for the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.

(7) The Commission shall adopt rules and regulations consistent with the provisions of this Chapter. All rules and regulations not inconsistent with the provisions of this Chapter heretofore adopted by the Board of Social Services shall remain in full force and effect unless and until repealed or superseded by action of the Social Services Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Human Resources.

(8) The Commission may establish by regulation, except for Title XX services provided solely through the Division of Mental Health, Mental Retardation and Substance Abuse Services, rates or fees for:

a. A fee schedule for the payment of the costs of necessary day care in licensed facilities and registered plans for minor children of needy families.

b. A fee schedule for the payment by recipients for services which are established in accordance with Title XX of the Social Security Act and implementing regulations; and

c. The payment of an administrative fee not to exceed two hundred dollars ($200.00) to be paid by public or nonprofit agencies which employ students under the Plan Assuring College Education (PACE) program.

d. Child support enforcement services as defined by G.S. 110- 130.1."

Sec. 2. This act is effective upon ratification.

SUMMARY OF A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE SOCIAL SERVICES COMMISSION TO ADOPT RULES PERTAINING TO THE EDUCATION REQUIREMENTS FOR DOMICILIARY HOMES.

For a number of years the Social Services Commission which is the rule-making body for domiciliary homes, under its general authority, had established rules related to the educational requirements for the administrator, the supervisor-in-charge and the activities coordinator in domiciliary homes. The June 22, 1990 meeting of the Administrative Rules Review Commission invalidated these rules. Therefore, this bill would amend G.S.143B-153(3)b to give express authority to the Social Services Commission to establish standards related to education requirements but only for the administrator, the supervisor-in-charge and the activities coordinator in domiciliary homes.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

D

91-LF-3
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Rest Home Regulation Report. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT THE DEPARTMENT OF HUMAN RESOURCES REPORT CHANGES IN DOMICILIARY HOME REGULATING, LICENSING, AND MONITORING TO THE NORTH CAROLINA STUDY COMMITTEE ON AGING.

Whereas, the Legislative Research Commission Study Committee on Rest Home and Nursing Home Care reported to the 1991 General Assembly that, in order to clarify and make more effective the State responsibility, authority, and accountability for domiciliary homes, there should be a single State agency to regulate, license, and monitor domiciliary homes; and

Whereas, the Secretary of the Department of Human resources has endorsed this recommendation and has taken steps to implement the transfer of all functions affecting the regulating, licensing, and monitoring of domiciliary homes to the Division of Facility Services; and

Whereas, the General Assembly needs to follow carefully this transfer, to determine whether any further changes in the law will be required; and

Whereas, the North Carolina Study Commission on Aging is the proper vehicle to aid and advise the General Assembly in this determination;

Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. The Department of Human Resources shall report to the North Carolina Study Commission on Aging by September 1, 1991, on the implementation of the transfer of domiciliary home regulating, monitoring, and licensing to the Division of Facility Services. This report shall include information on the following:

(1) The completeness of the transfer;

(2) The appropriate commission to make rules for the Division of Facility Services regarding its regulating, licensing, and monitoring domiciliary homes;

(3) The effort being made to provide training and technical assistance to local county personnel; and

(4) The effort being made to establish a system of regulating, licensing, and monitoring that distributes the results of negative action recommendations, along with the rationale for these recommendations, to all local departments of social services.

Sec. 2. This act is effective upon ratification.

SUMMARY OF A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT THE DEPARTMENT OF HUMAN RESOURCES REPORT CHANGES IN DOMICILIARY HOME REGULATING, LICENSING AND MONITORING TO THE NORTH CAROLINA STUDY COMMISSION ON AGING.

Currently, there is a lack of clarity of responsibility, authority and accountability at the State level with respect to licensing and monitoring of domiciliary homes. This is because there has been a division of responsibility among various agencies within the Department of Human Resources. Under his authority, the Secretary of the Department of Human Resources will transfer all responsibility for licensing and monitoring of domiciliary homes to the Division of Facility Services as of December 1, 1990.

Although this action takes no legislative action it is believed by the Committee that the actions of the Department should be reviewed by a legislative committee. Therefore, the bill requires that the Department of Human Resources shall report to the North Carolina Study Commission on Aging by September 1, 1990 and shall include the following information:

(1) The completeness of the transfer;
(2) The appropriate commission to make rules for the Division of Facility Services regarding its regulating, licensing, and montoring domiciliary homes;
(3) The effort being made to provide training and technical assistance to local county personnel; and
(4) The effort being made to establish a system of regulating, licensing, and monitoring that distributes the results of negative action recommendations, along with the rationale for these recommendations, to all local departments of social services.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

D

91-LF-4
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Rest Home Review Time Limit. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT THE DEPARTMENT OF HUMAN RESOURCES COMPLETE STAFF REVIEW OF LOCAL PENALTY RECOMMENDATIONS WITHIN 60 DAYS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131D-34(h) reads as rewritten:

"(h) The Secretary shall establish a penalty review committee within the Department, which shall review administrative penalties assessed pursuant to this section and pursuant to G.S. 131E-129. The Secretary shall ensure that departmental staff review of local departments of social services' penalty recommendations along with prepared staff recommendations for the penalty review committee are completed within 60 days of receipt by the Department of the local recommendations. The Penalty Review Committee shall not review penalty recommendations agreed to by the Department and the long-term care facility for Type B violations except those violations that have been previously cited against the long-term care facility during the previous 12 months or within the time period of the previous licensure inspection, whichever time period is longer. The Secretary shall ensure that the Nursing Home/Rest Home Penalty Review Committee established by this subsection is comprised of nine members. At least one member shall be appointed from each of the following categories:

(1) A licensed pharmacist;

(2) A registered nurse experienced in long-term care;
(3) A representative of a nursing home;
(4) A representative of a domiciliary home; and
(5) A public member.

Neither the pharmacist, nurse, nor public member appointed under this subsection nor any member of their immediate families shall be employed by or own any interest in a nursing home or domiciliary home.

Each member of the Committee shall serve a term of two years. The initial terms of the members shall commence on August 3, 1989. The Secretary shall fill all vacancies. Unexcused absences from three consecutive meetings constitute resignation from the Committee."

Sec. 2. This act shall become effecctive January 1, 1992.

SUMMARY OF A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT THE DEPARTMENT OF HUMAN RESOURCES COMPLETE STAFF REVIEW OF LOCAL NEGATIVE ACTIONS WITH 60 DAYS

This recommended bill amends G.S.131D-34(h) which establishes the Penalty Review Committee to require that the state-level staff to the Penalty Review Committee complete its review of penalty recommendations from local departments of social services within 60 days of receipt by the Department of Human Resources. Local DSS's report an excessive time for the Division of Facility Services to complete its staff review of local DSS recommendations for penalties. During this intervening time the homes continue to operate.

The effective date is January 1, 1992. This will allow sufficient time so that the Division of Facility Services may communicate with local DSS's the type of documentation required and the development of forms best able to expedite the penalty review process.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

D

91-LF-7
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Rest Home Cost Reports. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT DOMICILIARY HOME COST REPORTS BE CERTIFIED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131D-3 reads as rewritten:

"**§ 131D-3. Domiciliary care facilities; reporting requirements.**

The Department of Human Resources, Division of Social Services, by January 1, 1982, shall develop a cost and revenue reporting form for use by all domiciliary care facilities. This form shall be based on the uniform chart of accounts required in G.S. 131D-4. All facilities that receive funds under the State-County Special Assistance for Adults Program shall report total costs and revenues to the Department of Human Resources by March 1 of each year. Facilities licensed under the provisions of G.S. 131D-2(a)(5), facilities that are operated by or under contract with Area Mental Health, Mental Retardation and Substance Abuse Authority, and combination facilities providing either intermediate or skilled care in addition to domiciliary care shall not be required to comply with the reporting requirements in this section. All facilities shall be required to permit access to any requested financial records by representatives of the Department of Human Resources for audit purposes effective July 1, 1981.

An independent certified public accountant or an accountant shall certify each cost and revenue report that is submitted pursuant to this section. The certification statement shall include the following certifications, validations, and verifications:

(1) The verification that the amounts reported in the cost report relate to the proper calendar year, and reconcile to the general ledger, tax return, and appropriate financial statements;

(2) The validation of payroll costs reported for federal form 941 returns;

(3) The verification that depreciation expense is supported by appropriate backup schedules;

(4) The verification that interest expense reported agrees with bank statements and other support documentation;

(5) The verification that food, utilities, and other vendor payments are adequately supported by source documents;

(6) The certification that rent and lease expenses are supported by rental or lease agreements; and

(7) The certification that data related to paid patient days are supported by adequate census.

The Department may take either or both of the following actions to enforce compliance by a facility with this section, or to punish noncompliance:

(1) Seek a court order to enforce compliance;

(2) Suspend or revoke the facility's license, subject to the provisions of Chapter 150B."

Sec. 2. This act shall become effective October 1, 1991.

SUMMARY OF A BILL ENTITLED AN ACT TO REQUIRE THAT DOMICILIARY HOME COST REPORTS BE CERTIFIED.

GS-131D-3, passed by the 1981 General Assembly, established cost reporting requirements for domiciliary homes that receive funds under State/County Special Assistance. This same Chapter (G.S.131D-4) authorized the Department of Human Resources to develop a uniform chart of accounts for use by all domiciliary care facilities funded totally or in past through the SA Program to satisfy the cost reporting requirements.

This bill amends the cost reporting requirements in G.S.131D-3 to require that domiciliary facilities obtain an independent certification of the cost report before reporting to DHR. The independent certification would include:

(1) The verification that the amounts reported in the cost report relate to the proper calendar year, and reconcile to the general ledger, tax return, and appropriate financial statements;

(2) The validation of payroll costs reported for federal form 941 returns;

(3) The verification that depreciation expense is supported by appropriate backup schedules;

(4) The verification that interest expense reported agrees with bank statements and other support documentation;

(5) The verification that food, utilities, and other vendor payments are adequately supported by source documents;

(6) The certification that rent and lease expenses are supported by rental or lease agreements; and

(7) The certification that data related to paid patient days are supported by adequate census.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

D

91-LF-8
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Rest Home Reimbursement Study. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT THE DEPARTMENT OF HUMAN RESOURCES STUDY THE CURRENT REIMBURSEMENT SYSTEM FOR DOMICILIARY HOMES.

Whereas, G.S. 131D-3 establishes cost and revenue reporting requirements for domiciliary homes; and

Whereas, the North Carolina General Assembly directly sets the rates for domiciliary homes; and

Whereas the rates for these homes may not bear any real relationship to the cost data or to the fair market value of the care given; and

Whereas, there may be a better method for rate setting than the one being currently used;

Now, therefore,

he General Assembly of North Carolina enacts:

Section 1. The Department of Human Resources shall study the issue of reimbursement for domiciliary homes and shall recommend a specific method for rate setting.

This study shall consider:

(1) What the structure of the rates should be;

(2) How the levels of payment should be determined; and

(3) How the system of rate setting will be administered.

The Department shall report the results of this study, including any legislative recommendations, to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division by January 1, 1992.

Sec. 2. This act is effective upon ratification.

SUMMARY OF A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT THE DEPARTMENT OF HUMAN RESOURCES STUDY THE CURRENT REIMBURSEMENT SYSTEM FOR DOMICILIARY.

Historically, the General Assembly has directly established the State/County Special Assistance for Adults Program reimbursement rate for domiciliary homes in the Appropriations Act. This is an informal system and may not be consistently based upon data supplied from cost reports as required by statute.

Therefore, the bill requires the Department of Human Resources shall study the issue of reimbursement for domiciliary homes. The study shall consider:

(1) What the structure of the rates should be;

(2) How the levels of payment should be determined; and

(3) How the system of rate setting will be administered.

The report shall go to the Legislative Commission on Governmental Operations and to the Fiscal Research Division by January 1, 1992.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

D

91-LF-5
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Rest Home Due Process. (Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROTECT DOMICILIARY HOME PENALTY REVIEW COMMITTEE PROCEDURE FROM ABUSE OF PROCESS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 131D of the General Statutes is amended by adding a new section to read:

"**§ 131D-35. Interest on penalties; sanctions for frivolous appeals.**

(a) Any penalties assessed pursuant to G.S. 131D-34 are assessed as of the date of the decision of the Penalty Review Committee. The interest payable on such a penalty accrues from the date of decision until the date of payment.

(b) In cases appealed from the Penalty Review Committee, if the Administrative Law Judge finds that there was no foundation for the penalty or for the appeal or that the imposition of the penalty or that the appeal was frivolous, the judge shall assess the costs including a reasonable attorney's fee to the prevailing party of defending the appeal against the appellant."

Sec. 2. This act becomes effective October 1, 1990.

SUMMARY OF A BILL TO BE ENTITLED

AN ACT TO PROTECT DOMICILIARY HOME PENALTY REVIEW COMMITTEE PROCEDURE FROM ABUSE OF PROCESS.

The aim of the bill is to better control the appeals process which is available to domiciliary homes related to actions of the Penalty Review Committee. Provisions of the bill include the following:

1. Assessing interest and dollar penalties from the date of the decision until the date of payment.
2. In cases found by the Administrative Law Judge to have no foundation for an appeal or to be "frivilous", an assessment of costs against a violator for the time and other resources utilized by the county and state in the appeal process.
3. Conversely, to protect a home against abuse by the regulators, the assessment of the cost to the home of defending itself against proposed penalties in cases found by the Administrative Law Judge to be without foundation in regulation.